



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE

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Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
DIGITAL LOUDOUN PARKWAY CENTER NORTH, LLC
FOR
THE DIGITAL LOUDOUN II ASHBURN FACILITY
Registration No. 73670**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Digital Loudoun Parkway Center North, LLC, regarding the Digital Loudoun II Ashburn Facility for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

3. "Digital Loudoun" means Digital Loudoun Parkway Center North, LLC a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Digital Loudoun Parkway Center North, LLC is a "person" within the meaning of Va. Code § 10.1-1300.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" means the Digital Loudoun Parkway Center North, LLC Facility, located at 43881 Devin Shafron Drive in Ashburn, Virginia (a.k.a. Digital Loudoun II).
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
9. "PCE" means Partial Compliance Evaluation.
10. "Permit" means a minor New Source Review permit to modify and operate a data center which was issued under the Virginia Air Pollution Control Law and the Regulations to Digital Loudoun II, LLC on September 24, 2009 and amended on January 31, 2011, August 30, 2012, February 8, 2013 and January 29, 2014.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Digital Loudoun owns and operates the Facility in Ashburn, Virginia located in Loudoun County. The Facility is a data center with emergency generators. The Facility is the subject of the Permit which allows Digital Loudoun to construct and operate diesel engine generator sets at the Facility.

2. On April 27, 2017, Department staff conducted a PCE of the Facility in Ashburn, Virginia to observe scheduled stack testing for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observation:
 - a. Six, 2,500 kilowatt engine generator sets had been installed at the Facility in place of six of the one-hundred one, 2,000 kilowatt engine generator sets listed in the Permit.
3. On July 25, 2017, Department staff conducted a PCE of the Facility in Ashburn, Virginia to verify the presence and rating of units that were identified on notifications of installation and start-up that were submitted by Digital Loudoun to DEQ on May 8, and June 12, 2017. Based on the evaluation and notifications submitted, Department staff made the following observation:
 - a. Thirteen, 2,500 kilowatt engine generator sets had been installed at the Facility in place of thirteen of the one-hundred one, 2,000 kilowatt engine generator sets listed in the Permit.
4. 9 VAC 5-80-1120.A states that no owner or other person shall begin actual construction of, or operate, any new stationary source or any project subject to this article without first obtaining from the board a permit under the provisions of this article. The owner may not construct or operate the stationary source or project contrary to the terms and conditions of that permit.
5. On May 19, 2017, based on the observations noted during the April 27, 2017 PCE, the Department issued Notice of Violation No. ANRO000646 to Digital Loudoun II, LLC for the violations described in paragraphs C(2) and C(4) above.
6. On July 27, 2017, based on the observations noted during the July 25, 2017 PCE, the Department issued Notice of Violation No. ANRO000646-002 to Digital Loudoun II, LLC for the violations described in paragraphs C(3) and C(4) above.
7. DEQ conducted a file review in regards to Digital Loudoun's Title V application status. DEQ records indicate that with the issuance of the Stationary Source Permit to Construct and operate on January 29, 2014, the facility's permitted potential to emit Nitrogen Oxides as (NO₂) was 186.1 tons per year. In accordance with 9 VAC 5-80-60, the definition of a major source includes stationary sources that directly emit or have the potential to emit 100 tons per year or more of any air pollutant. In a letter dated February 27, 2014, from Digital Loudoun, Digital Loudoun provided notification of installation and or operation start dates for engine generator sets 1-5. Gen 1 had an actual start date of January 27, 2014. Based on the date the permit was issued to Digital Loudoun, which set the facility's potential to emit above major source thresholds and the date of commencing operation of the units which triggered the permitting action, the deadline for submitting the Form 805 Application for a Federal Operating Permit was January 29, 2015. A Form 805 was received by DEQ on January 16, 2018.

8. 9 VAC 5-80-80.C states that the owner of a stationary source applying for a permit under this article for the first time shall submit an application within 12 months after the source becomes subject to this article, except that stationary sources not deferred under 9VAC5-80-50 D shall submit their applications on a schedule to be determined by the department but no later than 12 months following the effective date of approval of this article by the administrator, to include approval for federal delegation purposes. 2. The owner of a source subject to the requirements of the new source review program shall file a complete application to obtain the permit or permit revision within 12 months after commencing operation. Where an existing permit issued under this article would prohibit such construction or change in operation, the owner shall obtain a permit revision before commencing operation. The owner of a source may file a complete application to obtain the permit or permit revision under this article on the same date the permit application is submitted under the requirements of the new source review program. 3. For purposes of permit renewal, the owner shall submit an application at least six months but no earlier than eighteen months prior to the date of permit expiration.
9. On December 1, 2017, based on the aforementioned file review, the Department issued Notice of Violation No. ANRO000646 to Digital Loudoun II, LLC for the violation described in paragraphs C(7) and C(8) above.
10. Based on the results of the April 27, 2017 and July 25, 2017, PCEs and the DEQ file Review, the Board concludes that Digital Loudoun Parkway Center North, LLC has violated 9 VAC 5-80-1120.A, and 9 VAC 5-80-80.C as described in paragraphs C(1) through C(9), above.
11. Digital Loudoun submitted a permit application to DEQ which was received on February 27, 2017, that requests a permit modification that would resolve the aforementioned NSR violations. This Permit was issued to Digital Loudoun on October 4, 2017. This permit issuance resolves the violations described in paragraphs C(3) and C(4) above. A Title V Permit application was received by DEQ on January 16, 2018 to resolve the violations described in paragraphs C(7) and C(8) above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Digital Loudoun Parkway Center North, LLC, and Digital Loudoun Parkway Center North, LLC agrees to pay a civil charge of \$142,040.92 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104

Richmond, Virginia 23218

Digital Loudoun Parkway Center North, LLC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Digital Loudoun Parkway Center North, LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Digital Loudoun Parkway Center North, LLC for good cause shown by Digital Loudoun Parkway Center North, LLC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Digital Loudoun Parkway Center North, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Digital Loudoun Parkway Center North, LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Digital Loudoun Parkway Center North, LLC declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Digital Loudoun Parkway Center North, LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing

herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Digital Loudoun Parkway Center North, LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Digital Loudoun Parkway Center North, LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Digital Loudoun Parkway Center North, LLC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Digital Loudoun Parkway Center North, LLC. Nevertheless, Digital Loudoun Parkway Center North, LLC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Digital Loudoun Parkway Center North, LLC has completed all of the requirements of the Order;

- b. Digital Loudoun Parkway Center North, LLC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Digital Loudoun Parkway Center North, LLC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Digital Loudoun Parkway Center North, LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Digital Loudoun Parkway Center North, LLC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Digital Loudoun Parkway Center North, LLC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Digital Loudoun Parkway Center North, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Digital Loudoun Parkway Center North, LLC.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
- 15. By its signature below, Digital Loudoun Parkway Center North, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 12th day of April, 2018.



Thomas A. Faha, Regional Director
Department of Environmental Quality

Digital Loudoun Parkway Center North, LLC voluntarily agrees to the issuance of this Order.

Date: 9/21/18 By: Sam Lucy, Vice President
(Person) (Title)
[Digital Loudoun Parkway Center North, LLC]

Commonwealth of ~~Virginia~~ Mass
City/County of Suffolk

The foregoing document was signed and acknowledged before me this 2 day of
April, 2018 by David Lucy who is
of Digital Loudoun Parkway Center North, LLC, on behalf
of the company.

[Signature]
Notary Public

Registration No. _____

My commission expires: _____

Notary seal:

